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IN THE

Supreme Court of the United States

October Term, 1963

No. 559

ELCEE LUCAS, J. J. LANE, E. O. SIMPSON and E. D. JACKSON,

Appellants,

vs.

TOM ADAMS, Secretary of State of the State of Florida, BOB HARRIS, T. K. STOKES, JR., LEM MERRETT, JULIAN WARREN AND FLETCHER MORGAN As members of the County Commission, and TOM GREENE, individually,

Appellees.

JURISDICTIONAL STATEMENT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION

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Attorneys for Appellants

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the United States District Court, Middle District of Florida, Jacksonville Division, No. 63-51-Civil-J, entered on the 22nd day of May, 1963, which denied appellants' Application for a Final Injunction to Restrain the Enforcement of Senate Bill No. 10-X (63) AN ACT PROVIDING FOR THE APPORTIONMENT OF THE MEMBERSHIP OF THE LEGISLATURE OF THE STATE OF FLORIDA; AMENDING SECTION 10.01, 10.03 and ADDING SECTION 10.04, FLORIDA STATUTES; PROVIDING FOR AN ELECTION; PROVIDING FOR FILLING VACANCIES; PROVIDING EFFECTIVE DATE so far as this law applied to the Election of Representation in the House of Representatives for the State of Florida, as passed by a Special Session of the Florida Legislature and approved by the Governor on February 4, 1963—Appendix 13-a, and submit this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the United States District Court for the Middle District of Florida, Jacksonville Division as shown in the accompanying Appendix, Page 1-a.

JURISDICTION

This suit was brought in the United States District Court for the Middle District of Florida, Jacksonville Division before a three judge Court under 28 U.S.C. Section 2281 and 28 U.S.C. Section 2284 (1) to enjoin the defendants, TOM ADAMS, Secretary of the State of Florida, BOB HARRIS, T. K. STOKES, JR., LEM MERRETT, JULIAN WARREN and FLETCHER MORGAN as members of the County Commission for Duval County, Florida, and TOM GREENE, individually from holding an election for representation in the House of Representatives pursuant to and by enforcing the Florida Apportionment Act passed by a special session of the Florida Legislature and approved by the Governor on February 4, 1963, as Senate Bill No. 10-X (63) Appendix 13-a. The Order of the District Court denying the injunctive relief sought and dismissing the complaint, was entered of the 22nd day of May, 1963. A Notice of Appeal was filed in this Court on the 19th day of July, 1963. The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred By 28 U.S.C. Section 1253 which provides:

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action suit or proceeding required by any act of congress to be heard and determined by a district court of three judges."

To sustain the jurisdiction of this court, this case must be one which properly invoked the three-judge jurisdiction under 28 U.S.C. Section 2281. Under the code provisions, this court has stated, that a three-judge court jurisdiction can be invoked only when the claim of unconstitutionality of a state statute is substantial ex parte Poresky, 290 U.S. 30; California Water Service Co. v. City of Redding, 304 U.S. 252. In recent decision which involved the issue of Reapportionment of State Legislature this court has held the U. S. District Court had jurisdiction to determine the constitutional issue raised in such Apportionment case. Baker v. Carr, 82 S.Ct. 691 (1962); Gray v. Sanders, 83 S.Ct. 801 (1963)

QUESTIONS PRESENTED

The United States District Court for the Middle District of Florida by its Order entered herein has refused to enjoin the enforcement of the 1963 Apportionment Act of Florida, designated as Senate Bill No. 10-X (63), notwithstanding its alleged unconstitutionality. The questions presented are:

1. The right to vote and to have one's vote counted in the election of a public officer is abridged unless the vote of one person is given approximately equal weight to that of other citizens in the state in the election of a single public officer voted on by all, or in the election of a number of similar public officers who have equal rank in the same governmental body, but elected from separate groups or constituencies within the state.

2. The Florida Reapportionment act is not free of invidious discrimination by securing to the citizens living in each county, regardless of population, the right to elect at least one representative to the state legislature, but failing to secure to a somewhat similar number of citizens living in the more popular counties the right to also nominate and elect at least one representative to the Florida Legislature.

5. Under the Florida Constitution a representative is required to be a duly qualified elector in the respective counties and district for which he is chosen, and any election pursuant to an apportionment act for such legislators that fail to provide for a division of the county into districts from which each of more than one legislator may be elected not only violates the State Constitution, but also violates the Fourteenth Amendment to the Constitution of the United States.

STATUTES INVOLVED

1. The 1963 Apportionment Act of Florida designated as Chapter 63-1 (X) Senate Bill No. 10-X (63) - AN ACT PROVIDING FOR THE APPORTIONMENT OF THE MEMBERSHIP OF THE LEGISLATURE OF THE STATE OF FLORIDA AMENDING SECTIONS 10.01, 10.03 AND ADDING SECTION 10.04, FLORIDA STATUTES; PROVIDING FOR AN ELECTION, PROVIDING FOR FILLING VACANCIES; PROVIDING EFFECTIVE DATE.

2. FLORIDA STATUTES 99.051—
WHEN NOMINATED NAMES TO APPEAR IN GROUPS

When an office requires the nomination of more than one candidate, as many groups shall be numerically designated as there are vacancies to be filled by nomination, each candidate shall indicate the group in which he desires his name to appear on the ballot.

3. HOUSE JOINT RESOLUTION NO. 5-X (63)
A Joint Resolution proposing an amendment of Article VII of the Constitution of the State of Florida; providing for apportionment of the Florida Legislature; providing for submission to the electors.

STATEMENT

The principle facts involved herein are as follows:

On July 23, 1962, a Three Judge District Court in the cases of Peter B. Sobell, on behalf of others vs. Tom Adams, Case No. 182-62-M-Civil-DD, and the case of Richard N. Swann v. Tom Adams, case No. 186-62-M-Civil-DD, entered an opinion in which it found that the then existing provisions of the Con-

stitution and statutes of the State of Florida which related to the nomination and election of the members of the Senate and the House of Representatives of the Legislature of the State of Florida were invidiously discriminatory and in conflict with the Equal Protection clause of the Fourteenth Amendment. The Court however refused to determine the type of representation the state should have that would square with the provisions of the Fourteenth Amendment of the Constitution of the United States and instead continued the cause to allow the State Legislature to reapportion itself prior to August 13, 1962.

On July 24, 1962, the Governor of Florida issued a call for the Legislature to convene in extraordinary session on August 1, 1962, for the sole purpose of considering reapportionment of the Florida Legislature. The Legislature met, took action and adjourned.

The Legislature withdrew from electoral consideration the proposed amendment to the Florida Constitution relating to legislative apportionment which it had submitted at its 1961 session. S.J.R. No. 216, Laws of Florida, Acts of 1961, p. 1165. A new proposal for a constitutional amendment, incorporated in House Joint Resolution 30X, passed both Houses and was submitted to the voters of Florida at the regular election held in November, 1962. The proposed amendment continued the bicameral legislature which Florida has had since it became a state. It carried on the traditional division of the State into senatorial districts composed of one or more counties and the allocation of one or more representatives to each county. The proposed amendment gave one representative to each of the counties of the State. Provisions were made for representative ratios. A representative ratio was defined as the quotient obtained by dividing the population of the State by the number of counties. Each county would have one additional representative for each representative ratio or major fraction thereof. Any county having more than four representative ratios shall have another representative. The Senate was to consist of forty-six members, each representing a district.

The Three Judge District Court approved House Joint Resolution 30X in its opinion issued in August, 1962; however,

at the general election in November, 1962 the Florida voters turned down the proposed Constitutional Amendment, thereby forcing the Governor to call another special session of the Legislature. This special session of the Legislature passed Senate Bill 10-X (63) which was approved by the Governor on February

This suit was brought pursuant to a Petition filed in the United States District Court, Middle District of Florida, alleging that Senate Bill 10-X (63), as approved by the Legislature and Governor of Florida, is invidiously discriminatory and in conflict with the Equal Protection clause of the Fourteenth Amendment

The Plaintiffs are Citizens of the State of Florida, residing in Duval County, Florida. All of the Plaintiffs are duly registered voters, homeowners and taxpayers, residing in Duval County All of the Plaintiffs are members of the Negro race. Approximately 1/3 of the population of Duval County are members of the Negro race and above 1/4 of the voting strength of the County are Negroes. There are more registered Negro voters in Duval County than the total population of almost 11 of the 67 counties in the State of Florida, yet each county in the State of Florida has at least one representative elected by the residents of that particular county. Some counties have less than 1,000 total population.

The present complaint was filed in District Court on March 19, 1965. The main contention of the plaintiffs is that the Apportionment Act designated as Senate Bill 10-X (63) failed to divide the larger counties into representative districts based on population, notwithstanding the Apportionment of the House of Representatives under the act was based chiefly upon population numbers. The Defendants made a Motion to Dismiss and a Motion for Summary Judgment.

On May 22, 1963, the Three Judge Court granted Defendants' Motion to Dismiss and for Summary Judgment on the grounds that the complaint failed to state a cause of action (App. pp. 2-a).

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

FLORIDA APPORTIONMENT ACT DESIGNATED AS 10-X (63) IS INVIDIOUSLY DISCIMINATORY AND IN CONFLICT WITH THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

The Florida Apportionment Act designated as Senate Bill 10 X (63) does not reapportion its House of Representatives on any rational basis which protects the individual voter residing in a large county so as to allow him to choose one representative from a number of residents which is in any way comparative with the number of residents living in the smaller counties which have the absolute right to elect at least one representative. The Reapportionment Act as drawn and applied deny Petitioners the full right to vote, and the equal protection of the law.

The inequality complained of by the individual voter residing in the more populated recognized units or counties is the great disparage of weight given his vote in comparison to the weight given the vote of a citizen residing in a much smaller populated unit or county in the selection of a single representative to occupy a seat in the Florida Legislature. This great disparage of weight given to one voter over another presents an important constitutional question because it effects the rights of million of voters to share in the operation of their state government. The importance of this question was pointed up by Justice Black in *Colgrove v. Green* opinion, 66 S.Ct. 1198 and 328 U.S. 559. Justice Black in his dissenting opinion took the following position:

> "The assertion here is that the right to have their vote counted is abridged unless the vote is given approximately equal weight to that of other citizens. It is my judgment that the District Court had jurisdiction; that the complaint presented a justifiable case and controversy, and that petitioners had standing to sue, since the facts alleged show that they have been injured *as individuals*. The complaint attacked the 1901 Apportionment Act as unconstitutional and alleged facts indicating that the act denied petitioners the full right to vote and equal protection of the laws. These allegations have not been denied, under these circumstances,

and since there is no adequate legal remedy for depriving a citizen of his right to vote, equity can and should grant relief.

Mr. Justice Black went on to say:

"No one would deny that the equal protection clause would also prohibit a law that would expressly give certain citizens a half-vote and others a full vote. The probable effect of the 1901 State Apportionment Act in the coming election will be that certain citizens, and among them the petitioners, will in some instances have votes only one-ninth as effective in choosing representatives to Congress as the votes of other citizens. *Such discriminatory legislation seems to me exactly the kind that the equal protection clause was intended to prohibit.*" (italics supplied for emphasis)

In the more recent decisions, this Court has felt the need to take a more decisive stand in protecting this type of equality between voters in the election of public officers. *Baker v. Carr*, 82 S.Ct. 691 and *Gray v. Sanders*, 83 S.Ct. 801 (1963).

The District Court ruled that the issue raised by plaintiffs recover on a theory under the United States Constitution that novel and has never heretofore been found to afford the re f prayed for. Plaintiffs differ with the District Court as to the vel nature of plaintiffs' theory of recovery, but admit that this urt has not ruled squarely on the alleged facts in this case. wever, it is the contention of plaintiffs that this Court did de le the issue raised by plaintiffs in this case in its decision ren ed in *Gray v. Sanders*, and submit that the Court's ruling in at opinion is the law that should govern the issues in this case.

We believe therefore, that the questions presented by the peal are substantial and that they are of public importance.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that on this 4th day of October, A.D. 1965, I mailed a true and correct copy of the foregoing Jurisdictional Statement with Appendixes to the attorneys for Appellants by placing in a properly addressed envelope with sufficient postage thereon and depositing same in the U. S. Mail.

Releford McGriff

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NO. 559

ELCEE LUCAS, J. J. LANE, E. O. SIMPSON and E. D. JACKSON,

Appellants,

vs.

TOM ADAMS, Secretary of State of the State of Florida, BOB HARRIS, T. K. STOKES, JR., LEM MERRETT, JULIAN WARREN and FLETCHER MORGAN as members of the County Commission, and TOM GREENE, individually,

Appellees.

Appendixes

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 63-51-Civil-J

ELCEE LUCAS, J. J. LANE, E. O. SIMPSON and E. D. JACKSON,

PLAINTIFFS,

versus

TOM ADAMS, Secretary of State of the State of Florida, BOB HARRIS, T. K. STOKES, JR., LEM MERRETT, JULIAN WARREN and FLETCHER MORGAN as members of the County Commission and TOM GREENE, individually,

Defendants

ORDER GRANTING MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT, AND DISMISSING CAUSE WITH PREJUDICE

Counsel for the respective parties, pursuant to numbered paragraph 2 of this Court's order of March 23, 1963, have timely filed and served their respective briefs in support of and in opposition to the defendents' motion to dismiss the complaint and motion for summary final judgment (made ore tenus, with leave of Court at the hearing of this cause on March 23, 1963, as recited by said order).

Neither party has requested further hearing in this cause to this date and the thirty (30) day period for such request provided by numbered paragraph 3 of the order of March 23, 1963, has now expired. The Court finds that further hearing is not necessary, and that the Court should now proceed to dispose of the case upon the merits upon the matters developed at the hearing on March 23, 1963 and upon the briefs filed before the Court by counsel for the respective parties.

The Court treats the failure of either party to request further hearing as the submission by each party for final decision upon the merits, that is, upon the motion for summary judgment.

The complaint fails to state a claim upon which relief can be granted. No amendment is sought or suggested, and we can conceive of no amendment to the complaint which would entitle the plaintiffs to relief for the reasons stated by Judge Tuttle for the Court in his oral opinion from the bench on March 23, 1963. No temporary restraining order or preliminary injunction could have been issued. The same reasons are equally compelling that no relief by way of permanent injunction may be afforded. The pleadings, testimony and exhibits on file show that there is no genuine issue as to any material fact and that the defendants are entitled to judgment as a matter of law.

In consideration of the foregoing, it is now by the Court

ORDERED:

1. The defendants' respective oral motions to dismiss and for summary judgment, tendered with leave of Court at the hearing on March 23, 1963, are each granted.

2. This cause be dismissed, on the merits, with prejudice.

DONE AND ORDERED this 22nd day of May, 1963.

/s/ ELBERT P. TUTTLE
CHIEF JUDGE, United States Court of Appeals, Fifth Circuit.

/s/ WARREN L. JONES
United States Circuit Judge

/s/ BRYAN SIMPSON
United States District Judge

Releford McGriff, Esquire
Ernest D. Jackson, Esquire
Attorneys for Plaintiffs.

Honorable Richard W. Ervin
Attorney General
State of Florida

Honorable J. Henry Blount
County Attorney, Duval County, Florida

F. Bradley Kennelly, Esquire
Attorney for Tom Greene, Esquire

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF FLORIDA. JACKSONVILLE DIVISION

CIVIL ACTION NO. 63-51-Civ-J

ELCEE LUCAS, J. J. LANE, E. O. SIMPSON and E. D. JACKSON

Plaintiffs,

vs.

TOM ADAMS, Secretary of State of the State of Florida, BOB HARRIS, T. K. STOKES, JR., LEM MERRETT, JULIAN WARREN and FLETCHER MORGAN as members of the County Commission and TOM GREENE, individually,

Defendants.

COMPLAINT

Come now the Plaintiffs on their behalf and on behalf of those Citizens residing in the 2nd Commissioner District of Duval County, Florida, similarly situated and bring this their Petition praying for a Declaratory Judgment and certain injunctive relief.

I

(a) The Jurisdiction of this Court is invoked under Title 28, U.S. Code, Section 1343(3). This action arises to redress the deprivation, under color of State Law, statutes, rights, privileges and immunities secured to the plaintiffs and other Negro Citizens similarly situated by the Constitution of the United States. This action is authorized against some of the defendants by the Acts of Congress, Revised Statutes, Section 1979, derived from the Acts of April 20, 1871, Chapter 22, Section 1, 17 Stat. 13 (Title 42, United States Code, Section 1983 and 1988), to be commenced by any citizen of the United States or other persons within the jurisdiction thereof to redress the deprivation of those rights secured by the Fourteenth Amendment of the Constitution of the United States and against all of the defendants by the Act of Congress, Revised Statutes, Section 1977, derived from the Act of May 31, 1870 Chapter 114, Section 16; 16 Stat. 144, (Title

42 U.S.C. Section 1981) providing for equal rights of citizens and all persons within the jurisdiction of the United States as hereinafter more fully appears.

(b) Jurisdiction is further invoked under Title 28, U.S.C. Section 1331. This action arises under Article 1, Section 8, and the Fourteenth Amendment of the Constitution of the United States, Section 1, and under Title 28, U.S.C., Section 2201 and 2202 providing for this Court to render a Declaratory Judgment with necessary or proper relief. There is an actual controversy between the plaintiffs and the defendants.

II

The Petitioners, ELCEE LUCAS, J. J. LANE and E. O. SIMPSON, are duly qualified electors of the State of Florida residing in the 2nd County Commission District in Duval County, Florida. The Petitioner, E. D. Jackson is a duly qualified elector residing in the Second County Commission District in Duval County, Florida and a duly certified Candidate for the House of Representatives of the Legislature of the State of Florida.

III

The Respondent, TOM ADAMS, is the Secretary of State of Florida. The Respondents BOB HARRIS, T. K. STOKES, JR., LEM MERRETT, JULIAN WARREN, FLETCHER MORGAN are members of the Board of County Commissioners of Duval County, Florida. Respondent TOM GREENE is the purported successful Democratic nominee whose name is intended to be printed on the Election Ballot in the Special Election scheduled to be held on March 26, 1963.

IV

There is an actual and genuine controversy between the Petitioners and the Respondents, and the rights of the Petitioners and the Respondents are in dispute and uncertain.

V

The Petitioners allege that the Special Election scheduled to be held in Duval County, Florida on March 26, 1963, as well as the two Primary Elections held for four additional Representatives for the Florida State Legislature pursuant to the new and present Reapportionment Act passed by the Florida Legislature on February 1, 1963 and designated as Senate Bill 10-X 63, violates the equal protection of the Law guaranteed to the petitioners and those similarly situated,

by the 14th Amendment to the Constitution of the United States. The two Primaries and the scheduled Special Election violates the spirit and legal purpose of the 1963 Reapportionment Act as approved by the Three Judge District Court of the Southern District of Florida in the case styled Sobel v. Adams and Swann v. Adams, Case No. 182-62M and 186-62-M, respectively.

VI

The Florida Reapportionment Act of 1963 and the Special Election called by the Governor of the State of Florida to nominate and elect the four additional Representatives to the State Legislature from Duval County subjects the petitioners and those similarly situated to invidious discrimination and a denial of the Equal Protection of the Law guaranteed under the 14th Amendment to the Constitution of the United States, in that the Special Election and the two Primaries deny the petitioners and those similarly situated the right to elect a Representative of their own choice, notwithstanding petitioners constitute a larger numerical group of citizens residing in Duval County than the numerical number of residents living in any of the several counties whose rights are secured by the 1963 Reapportionment Act to have the sole right to elect at least one Representative to the State Legislature of Florida from among themselves. Petitioners allege that this denial of the Equal Protection of their numerical group is a denial of the Equal Protection of the Law to each member of Petitioners' group and is in violation of the 14th Amendment to the Constitution of the United States.

VII

The inequality complained of herein deny the several petitioners and those similarly situated their Constitutional Right to have a Representative based on their numerical number of their own choosing to represent them in the State Legislature, notwithstanding the spirit and purpose of the 1963 Reapportionment Act of Florida as approved by the United States District Court of the Southern Division was represented to be an effort to give to the residents of the more populated Counties a greater and more equal representation in the State Legislature based on the United States Department Census Count.

VIII

(a) Th inequality complained of herein deny the Petitioner, E. D. Jackson, as a duly certified candidate for the House of Representative of the State of Florida and a Citizen and resident of Commission District Two, a property right, to-wit: the right to hold an Elective Office to which a meager compensation was attached and in addition thereto denied the said E. D. Jackson a fair and equal opportunity to be chosen the duly qualified and duly elected Candidate for a constituency of Citizens residing in Duval County and who constitute a political division or constituency of Duval County, to-wit: The 2nd Commission District. The Florida Constitution Art. 8.5 requires that Duval County be divided into five County Commission Districts which districts shall be numbered one to five inclusive and shall be as nearly as possible equal in proportion to population.

(b) The Special Election called by the Governor of Florida, together with the two (2) Primaries did not require the candidates to register in a group that coincided with any unit or constituency of the County based on a population division of the residents of Duval County, neither did any of the Legislative groups coincide with any existing division of the County Units so as to provide for residence in any particular division of the County. There were no rime or reason or distinction made between one Legislative Group as opposed to another Legislative Group. The result of which, candidates for each group could indiscriminately select a group; notwithstanding, his place of residence. This indiscriminate and arbitrary selection of Legislative Groups has resulted in the selection of candidates living in the same Commission Districts, while denying other districts a Legislative Representative who resides in their district. There is no rationality in the selection of the representatives in Duval County and the Reapportionment Act of 1963 as applied subjects the petitioners and those smilarly situated to invidious discrimination.

The colored population who reside in County Commission District No. 2, who gave E. D. Jackson more than a three thousand vote margin over his nearest opponent and a majority of the total votes cast in District 2 in the First Primary, and a more than Two Thousand vote margin over his opponent in the Second Primary, has been denied the right to

elect a Representative of their own choosing, notwithstanding the Negro population residing in County Commission District 2 greatly exceed the population of some of the smaller counties where its residents, though smaller in number, are guaranteed the right under the 1963 Reapportionment Act of Florida, to elect at least one member of their choosing to the House of Representative in the State Legislature. Petitioners allege that for the reasons stated herein Petitioner and other colored citizens similarly situated and residing in Duval County, Florida have been denied the equal protection of the Law of Florida in its application in that while the reapportionment Law of Florida makes certain and guarantee the right of a smaller group of citizens residing in a small county to elect a representative to the House of Representative, notwithstanding the smallness of their number. It failed to protect the petitioners so as to guarantee to them the equal right to elect at least one representative to the Florida House who resides within their constituency, notwithstanding their superior number. The Reapportionment Act as applied by the Governor and the Secretary of State in the Special Primary and Election cited herein, wholly fail to protect the rights of the nearly 70,000 Negroes who reside in County Commission District No. 2 of Duval County, so as to guarantee to them the right to select a candidate who at least resides in their community or County Commission District.

IX

Petitioners further allege that in addition to the obvious denial of the equal protection of the Law so far as the Reapportionment Act applies to the petitioners and other colored residents of County Commission District No. 2, it is equally obvious that the Law as applied subjects the entire population of Duval County, both white and colored, to the control of a powerful minority consentrated in a small section of the County so as to control the entire county election and deprive the residents of any of the other County Commission Districts the right to select or choose a representative. This is true notwithstanding the fact that the new legislative seat, as well as the old one whose office was created pursuant to a unit division of the population but whose election to the office has no relation to a unit division of the population so far as voting or residence in the larger counties.

X

Petitioners further allege that unless this Court advance this case upon its dockets and enter an immediate ruling declaring the rights of the petitioners and enjoining the members of the County Commission and the Secretary of State from having the name of Tom Greene printed on the election ballot on March 26, 1963 at which time the Special Election pursuant to the Governor's call will be held, your petitioners will suffer irreparable damage and will continue to suffer irreparable damage at which there is no adequate remedy at Law.

WHEREFORE, Petitioners pray for the following relief:

1. That this Court take jurisdiction of this matter and of the parties named herein.

2. That this Court advance this cause upon its dockets as quickly as possible so as to enter its ruling prior to March 26, 1963.

3. That this Court, after a full hearing, enter a Declaratory Judgment against the Respondents declaring E. D. Jackson to be the duly elected Democratic nominee from County Commission District 2 of Duval County, or in the alternative enter an Order declaring the First and Second Primaries held on February 28th and March 12, respectively in Duval County pursuant to a call for a Special election made by the Governor of the State of Florida, to be illegal and void on the grounds that the same constituted no rational plan of reapportionment in the selection of a candidate for the House of Representatives for the State of Florida from Duval County, and that the primaries as held constituted an invidious discrimination against the petitioners as Negroes residing in County Commission District 2 of Duval County, Florida.

4. That the Court enter an injunction enjoining the Respondent, Tom Adams, as the Secretary of the State of Florida and the Respondents, Bob Harris, T. K. Stokes, Jr., Lem Merrett, Julian Warren and Fletcher Morgan as members of the Board of County Commission, from printing the name of Tom Greene on any election ballot to be used in the Special Election scheduled for March 26, 1963.

5. That the petitioners be granted any and all additional relief this Court may deem necessary and proper to insure petitioners of their Constitutional Rights to a rational plan of proportionate representation free of any invidious discrimination against the petitioners as residents living in County Commission District 2 of Duval County, Florida.

6. That the Court enter an Order directing a rational plan for the election of the newly created representatives to the Florida Legislature from Duval County.

/s/ Elcee Lucas

ELCEE LUCAS

/s/ Releford McGriff
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/s/ Ernest D. Jackson, Sr.
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AFFIDAVIT

STATE OF FLORIDA)
) SS
COUNTY OF DUVAL)

Before me, the undersigned authority, personally appeared ELCEE LUCAS, one of the Plaintiffs named herein, and upon being duly sworn, says on oath that he is one of the plaintiffs in the foregoing Complaint, that he has read the Complaint, knows and undersands its contents and that the matters and things alleged are true and correct to the best of his knowledge.

/s/ Elcee Lucas

ELCEE LUCAS

Sworn to and subscribed before me
this 19th day of March, A.D. 1963.
/s/ Earlene Wade
Notary Public, State of Florida at Large.
My Commission expires: August 17, 1965

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ELCEE LUCAS, J. J. LANE, E. O. SIMPSON and E. D. JACKSON,

Plaintiffs,

vs

No. 63-51-Civil-J

TOM ADAMS, Secretary of State of the State of Florida, BOB HARRIS, T. K. STOKES, JR., LEM MERRETT, JULIAN WARREN and FLETCHER MORGAN as members of the County Commission and TOM GREENE, individually,

Defendants.

ORDER

Counsel for all affected parties were heard this day upon application of the plaintiffs for temporary restraining order and for interlocutory injunction. Counsel for defendants waived the requirement of Title 28, United States Code, Section 2284(2) for five days' notice to the Governor and Attorney General of the State of Florida.

Certain evidentiary exhibits numbered 1 through 10, were offered by plaintiffs and received by the Court. Neither party offered any testimony. The application was heard and submitted upon the sworn complaint, the aforesaid plaintiffs' exhibits, and the argument of counsel for the respective parties.

Counsel for the defendants, at the conclusion of the plaintiffs' presentation, were given leave to move ore tenus to dismiss the complaint, and for summary final judgment, and such motions were so made on behalf of all defendants. Said motions were not ruled upon and permission was granted the parties to file briefs in support of and in opposition to said motions. Time for the service and filing of briefs is fixed herein.

At the conclusion of the hearing Chief Judge Tuttle announced from the bench for the Court its decision and ruling that neither temporary restraining order nor interlocutory

injunction should issue, stating the reasons for such ruling and decision. Said announcement is adopted by the Court as its findings of Fact and Conclusions of Law upon disposition of said application, (see Rule 54(a), F.R.Civ.P.) and the Official Court Reporter in attendance, Mr. Joseph A. Sheridan, is directed to transcribe said portion of these proceedings and file the same with the Clerk of this Court.

In consideration of the foregoing, it is now by the Court

ORDERED:

1. Said applications for temporary restraining order and for interlocutory injunction are each denied.

2. Counsel for the respective parties may file and serve briefs with respect to the defendants' oral motions to dismiss the complaint and for summary final judgment within the following times: the defendants' briefs within twenty (20) days from this date, the plaintiffs' reply brief within ten (10) days thereafter, and any reply by defendants within an additional five (5) days thereafter.

3. In the absence of express written request from counsel for either party received within thirty (30) days from this date, or direction by the Court, the Court will thereupon dispose of the case upon the merits upon the briefs filed and upon the matters developed at today's hearing.

4. Pending disposition of said oral motions to dismiss and for summary final judgment, the defendants are not required to file and serve answers or other responsive pleadings to the complaint. If said motions are denied by the Court, time for answer will be fixed by the order of denial.

DONE AND ORDERED at Jacksonville, Florida, this March 23, 1963.

/s/ Elbert P. Tuttle

CHIEF JUDGE, United States Court of Appeals, Fifth Circuit.

/s/ Warren L. Jones

United States Circuit Judge

/s/ Bryan Simpson

United States District Judge

Reletord McGriff, Esquire
Ernest D. Jackson, Esquire,
Attorneys for Plaintiffs.

Honorable Richard W. Ervin
Attorney General
State of Florida

Honorable J. Henry Blount
County Attorney, Duval County, Florida

F. Bradley Kennelly, Esquire
Attorney for Tom Greene, Esquire

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ELCEE LUCAS, J. J. LANE,
E. O. SIMPSON and E. D. JACKSON,

Plaintiffs,

-vs- No. 63-51-Civ-J

TOM ADAMS, Secretary of State of the State of Florida, BOB HARRIS, T. K. STOKES, JR., LEM MERRETT, JULIAN WARREN and FLETCHER MORGAN as members of the County Commission, and TOM GREENE, individually,

Defendants.

RULING OF THREE JUDGE COURT

Composed of Judge Elbert P. Tuttle, Judge Warren L. Jones, and Judge Bryan Simpson, at Jacksonville, Fla.,

on Saturday, March 23, 1963

JUDGE TUTTLE:

Gentlemen, for the purpose of this hearing, there is no dispute in the facts, but Courts are traditionally reluctant to grant temporary injunctions unless the right of the plaintiff to the injunction is clear and convincing.

It appearing that the plaintiffs here seek to recover on a theory under the United States Constitution that is novel and has never heretofore been found to afford the relief

they now seek, the plaintiffs' right to recover, if it exists, is not clear and convincing, and plaintiffs, therefore, do not present the kind of a case where a Federal Court should interfere with as important a State right as the holding of a State election as close upon us as next week.

The Court therefore will deny the motion for a temporary restraining order and deny the motion for preliminary injunction.

This statement is made in lieu of the statement of facts required under Rule 52.

The Court will consider the motion to dismiss and consider any briefs that are filed by either party and unless counsel expressly requests in writing that further hearing be had on the merits of the case, the Court will dispose of the matter on the briefs that are filed hereafter. Are there any other questions in connection with it?

MR. JACOBS:

No, sir.

JUDGE TUTTLE:

If not, the Court will stand adjourned.

. . . Thereupon, at 3:35 o'clock p.m., Saturday, March 23, 1963, the Court adjourned.

Engrossed

Chapter 63-1(X)

Senate Bill No. 10-X (63)

AN ACT PROVIDING FOR THE APPORTIONMENT OF THE MEMBERSHIP OF THE LEGISLATURE OF THE STATE OF FLORIDA; AMENDING SECTIONS 10.01, 10.03 AND ADDING SECTION 10.04, FLORIDA STATUTES; PROVIDING FOR AN ELECTION; PROVIDING FOR FILLING VACANCIES; PROVIDING EFFECTIVE DATE. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. Section 10.01, Florida Statutes, is amended to read:

10.01 Division of state into senatorial districts; apportionment of senate, etc.—

(1) The representation in the senate of the Florida legislature shall consist of forty-three (43) members, each representing a district. The counties of the state shall be apportioned into forty-two (42) senatorial districts and one district shall be added by superimposing over district thirteen (13) district forty-three (43) representing Dade County. The forty-three (43) districts shall be apportioned among the several counties of the state to provide equitable representation based upon similar economic interests, geographic area and population. If by this reapportionment the district of a member of the senate whose term of office expires with the general election of November 1964 shall be abolished, or the number of his district relocated outside of his present district, then such member shall continue as a senator for the county of his residence during the remainder of his term and shall have an equal vote with any other senator and the number of his senatorial district shall be indicated by adding the letter X after the number of the district to which he was elected even though it increases the maximum number of members herein provided for; no county except Dade shall be divided in creating a senatorial district. Every district shall consist of contiguous counties. 10-X (63)

1

(2) Pursuant to this act forty-three (43) senatorial districts shall be constituted as follows:

First district— Santa Rosa county
Second district— Escambia county
Third district— Walton county, Holmes county and Washington county
Fourth district— Jackson county and Calhoun county
Fifth district— Wakulla county, Liberty county, Gulf county and Franklin county
Sixth district— Gadsden county
Seventh district— Polk county
Eighth district— Leon county
Ninth district— Hernando county, Sumter county and Citrus county
Tenth district— Taylor county, Madison county and Jefferson county
Eleventh district— Pinellas county
Twelfth district— St. Lucie county
Thirteeth district— Dade county

Fourteenth district— Columbia county
Fifteenth district— Bradford county, Clay county and Union county

Sixteenth district— Nassau county and Baker county
Seventeenth district— Hamilton county, Suwannee county and Lafayette county

Eighteenth district— Duval county
Nineteeth district— Orange county
Twentieth district— Marion county
Twenty-first district— Dixie county, Levy county and Gilchrist county

Twenty-second district— Sarasota county
Twenty-third district— Lake county 10-X (63)

2

Twenty-fourth district— Lee county, Hendry county and Collier county

Twenty-fifth district— Bay county
Twenty-sixth district— Putnam county
Twenty-seventh district— Hardee county, Desoto county and Glades county

Twenty-eighth district— Volusia county
Twenty-ninth district— Indian River county
Thirtieth district— Broward county
Thirty-first district— St. Johns county and Flagler county
Thirty-second district— Alachua county
Thiry-third district— Osceola county, Okeechobee county and Martin county

Thirty-fourth district— Hillsborough county
Thirty-fifth district— Palm Beach county
Thirty-sixth district— Manatee county
Thirty-seventh district— Brevard county
Thirty-eighth district— Pasco county
Thirty-ninth district— Okaloosa county
Fortieth district— Charlotte county and Highlands county
Forty-first district— Monroe county
Forty-second district— Seminole county
Forty-third district— Dade

Section 2. Section 10.03, Florida Statutes, is amended to read:

10.03 **Representation in the House of Representatives.—**

(1) Representation in the house of representatives shall consist of one hundred twelve (112) representatives which shall be apportioned among the counties by the method of equal proportions; that is, each county shall have one representative and the remaining representatives shall be assigned to the counties in proportion to population.

(2) Pursuant to subsection (1) of this section, there shall be one hundred twelve (112) members of the house of representatives apportioned among the several counties as follows:

County	number of Representatives
Dade	14
Duval	7
Hillsborough	6
Pinellas	6
Broward	5
Orange	4
Palm Beach	4
Polk	3
Escambia	3
Volusia	2
Brevard	2
Sarasota	1
Leon	1
Alachua	1
Manatee	1
Bay	1
Okaloosa	1
Lake	1
Seminole	1
Lee	1
Marion	1
Monroe	1
Gadsden	1
St. Lucie	1
Pasco	1
Jackson	1

County	number of Representatives
Putnam	1
St. Johns	1
Santa Rosa	1
Indian River	1
Highlands	1
Columbia	1
Clay	1
Osceola	1
Nassau	1
Martin	1
Collier	1
Walton	1
Suwannee	1
Madison	1
Taylor	1
Charlotte	1
Bradford	1
Hardee	1
Sumter	1
Desoto	1
Washington	1
Hernando	1
Holmes	1
Levy	1
Gulf	1
Jefferson	1
Citrus	1
Hendry	1
Hamilton	1
Calhoun	1
Baker	1
Franklin	1
Okeechobee	1

10-X

5

Union	1
Wakulla	1
Flagler	1
Dixie	1
Liberty	1
Glades	1
Lafayette	1
Gilchrist	1

Section 3. Section 10.04, Florida Statutes, is added to read:

10.04 **Legislative apportionment.—**

(1) The 1963 legislature shall be composed of the legislators elected pursuant to the constitution of 1885, as amended, and of the additional legislators as provided for in sections 10.01 and 10.03, Florida Statutes, as amended at this special session of the legislature. Any representative or senator elected in the 1962 general election pursuant to the constitution of 1885, as amended, shall serve in said office for the term for which he was elected. The terms of office of members of the senate shall be for four (4) years and the terms of office of members of the house of representatives shall be for two (2) years. Any senator now serving shall complete his term to which he was elected; provided that the resignation or death of any legislator elected at or prior to the 1962 general election shall create a vacancy. The additional legislative offices herein created shall be filled by and at a special election to be held in the affected counties or districts, as provided by law; provided, however, the registration books for the elections provided herein shall close at 5 p.m. on the fifteenth day before the first primary election and remain closed for the remaining second primary and general election. The senators elected from the new

even-numbered districts shall be elected for a term ending with the general election of 1966 and the senators elected from the new odd-numbered districts shall be elected for a term ending with the general election of 1964; thereafter all senators shall be elected for four (4) year terms.

(2) The legislature shall hereafter reapportion its representation in the state senate at such times as may be required by the constitution of Florida.

Section 4. It is declared to be the legislative intent that, if any section, subsection, sentence, clause or provision of this act is held invalid, the remainder of the act shall not be affected.

Section 5. This act shall take effect immediately upon becoming a law. 10-X(63)

Approved by the Governor February 4, 1963.
Filed in Office Secretary of State February 4, 1963.

STATUTES INVOLVED

Florida Statutes 99.051—

When nominated names to appear in groups

When an office requires the nomination of more than one candidate, as many groups shall be numerically designated as there are vacancies to be filled by nomination, each candidate shall indicate the group in which he desires his name to appear on the ballot.

HOUSE JOINT RESOLUTION NO. 5-X (63)

A Joint Resolution proposing an amendment of Article VII of the Constitution of the State of Florida; providing for apportionment of the Florida Legislature; providing for submission to the electors.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

That the following amendment of Article VII of the Constitution of Florida is agreed to and shall be submitted to the electors of this state for ratification or rejection, at the general election of 1964.

ARTICLE VII

APPORTIONMENT AND CENSUS

Section 1. **Composition of the legislature.** — The legislature of the State of Florida shall consist of a senate and a house of representative. Members of the senate shall be elected for a term of four (4) years and members of the house shall be elected for a term of two (2) years. The term of members of the legislature shall expire on the first Tuesday after the first Monday in November in each regular election year. Members of the senate and house of representatives shall be elected as provided by law. Any new county that may be created shall be entitled to one (1) member in the house of representatives in excess of any limit prescribed in the following sections of this article until the next reapportionment and the county shall be assigned when created to a senatorial district as determined by the legislature.

Section 2. **Senate apportionment.**— The legislature shall divide the state into forty-two (42) senatorial districts with only one (1) senator elected in each district; except there shall be two (2) senators elected from the most populous

county, the additional senator being assigned the number forty-three (43). the forty-two (42) districts shall be apportioned among the several counties of the state so as to provide equitable representation based upon similar economic interests, geographic area and population. Every district shall consist of contiguous counties, and no county may be divided in creating a senatorial district except Dade County.

Section 3. **Representation in the House of Representatives.**— Representation in the house of representatives shall consist of one hundred twelve (112) representatives which shall be apportioned among the counties by the method of equal proportions; that is, each county shall have one representative and the remaining representatives shall be assigned to the counties in proportion to population. The populations of the respective counties for the purposes of this section shall be confined to citizens of the United States and shall not include foreign-born persons who have not become naturalized.

Section 4. The legislature shall reapportion the representation of the house and senate at the 1971 regular session of the legislature and every ten (10) years thereafter based upon the preceding latest federal decennial census.

Section 5. If any part of this joint resolution is declared unconstitutional or null and void then the entire resolution shall be null, void and inoperative.

5-X (63)

Filed in Office Secretary of State February 4, 1963.

CONSTITUTIONAL PROVISIONS INVOLVED

FLORIDA CONSTITUTION OF 1885, Article 8, Section 5

Section 5. County commissioners; commissioners' districts

Immediately upon the ratification of this Amendment the county commissioners of the several counties of this State shall divide their respective counties into five commissioners' districts, to be numbered respectively from one to five, inclusive, and each district shall be as nearly as possible equal in proportion to population, and thereafter there shall be in each of such districts a county commissioner, who shall be elected by the qualified electors of said county, at the time and place of voting for other county officers, and shall hold his office for two years. The powers, duties and compensation of such county commissioner shall be prescribed by

law: Provided, That nothing herein shall affect the terms of commissioners holding office at the time of such division: Provided, further, That all vacancies occurring by limitation of terms, or from death, resignation or otherwise, before the election of 1902, shall be filled by appointment by the Governor, as now provided by law. (As amended, general election, 1900.)

FLORIDA CONSTITUTION OF 1885, Article 8, Section 5 (As amended in the general election, 1944).

Section 5. County commissioners and commissioners' districts

There shall be one County Commissioner in each of the five County Commissioners' districts in each county, which districts shall be numbered one to five inclusive, and shall be as nearly as possible equal in proportion to population. The Board of County Commissioners in the respective counties shall from time to time fix the boundaries of such districts. Said County Commissioners shall be elected by the qualified electors of said county at the time and place of voting for other county officers, and shall hold office for four years, Provided, that the County Commissioners elected from the even numbered districts in 1944 shall serve for two years, those elected in 1944 from the odd numbered districts shall serve for four years, and thereafter the terms shall be for four years; Provided, that Section 11 of Article VIII of this Constitution shall not be affected hereby.

FLORIDA CONSTITUTION OF 1885, Article 3, §4

§4. Eligibility of legislators; remuneration

Section 4. Senators and members of the House of Representatives shall be duly qualified electors in the respective counties and districts for which they were chosen. The pay of members of the Senate and House of Representatives shall not exceed six dollars a day for each day of session, and mileage to and from their homes, to the seat of government, not to exceed ten cents a mile each way, by the nearest and most practicable route.

FLORIDA CONSTITUTION OF 1885, Article 3, §4 (As amended, general election, Nov. 2, 1948; general election,

Nov. 2, 1954.

§4. Legislators, salaries, etc.

Section 4. Senators and members of the House of Representatives shall be duly qualified electors in the respective counties and districts for which they were chosen. The compensation of legislators shall be twelve hundred ($1200.00) dollars each year and shall be paid in monthly installments of one hundred ($100.00) dollars each. During the time the legislature is in session each legislator shall receive per diem and travel expenses as provided by law, but such may not exceed the allowances for such expenses provided for other state officials under general law.

POPULATION TABLE "B"

1960 Census—Alphabetical Listing of Counties and Suggested Brackets

County	Population	Suggested Brackets
Alachua	74,074	70,000 — 74,200
Baker	7,363	6,800 — 7,400
Bay	67,131	64,000 — 68,000
Bradford	12,446	12,380 — 12,490
Brevard	111,435	80,000 — 120,000
Broward	333,946	300,000 — 350,000
Calhoun	7,422	7,400 — 7,600
Charlotte	12,594	12,500 — 13,000
Citrus	9,268	8,300 — 9,400
Clay	19,535	19,200 — 20,000
Collier	15,753	15,700 — 16,400
Columbia	20,077	19,800 — 21,900
Dade	935,047	over 900,000
Desoto	11,683	11,300 — 11,800
Dixie	4,479	3,400 — 4,500
Duval	455,411	400,000 — 900,000
Escambia	173,829	130,000 — 190,000
Flagler	4,566	4,555 — 4,600
Franklin	6,576	6,500 — 6,600
Gadsden	41,989	40,000 — 45,000
Gilchrist	2,868	not over 2,870
Glades	2,950	2,900 — 3,000
Gulf	9,937	9,600 — 10,200
Hamilton	7,705	7,500 — 8,000
Hardee	12,370	11,900 — 12,400

County	Population	Suggested Brackets
Hendry	8,119	7,800 — 9,100
Hernando	11,205	10,900 — 11,230
Highlands	21,338	20,500 — 23,000
Hillsborough	397,788	390,000 — 450,000
Holmes	10,844	10,400 — 11,000
Indian River	25,309	23,000 — 28,000
Jackson	36,208	36,000 — 36,700
Jefferson	9,543	9,400 — 9,700
Lafayette	2,889	2,870 — 2,925
Lake	57,383	56,000 — 61,000
Lee	54,539	52,000 — 54,800
Leon	74,225	74,200 — 76,000
Levy	10,364	10,000 — 10,800
Liberty	3,138	3,000 — 4,400
Madison	14,154	13,900 — 14,700
Manatee	69,168	69,000 — 70,000
Marion	51,616	51,000 — 53,000
Martin	16,932	15,800 — 17,000
Monroe	47,921	45,000 — 51,000
Nassau	17,189	17,000 — 19,000
Okaloosa	61,175	60,000 — 66,000
Okeechobee	6,424	6,100 — 6,500
Orange	263,540	230,000 — 300,000
Osceola	19,029	17,500 — 19,400
Palm Beach	228,106	200,000 — 260,000
Pasco	36,785	36,700 — 38,000
Pinellas	374,665	350,000 — 385,000
Polk	195,139	175,000 — 200,000
Putnam	32,212	30,500 — 35,000
St. Johns	30,034	30,000 — 32,000
St. Lucie	39,294	37,000 — 39,900
Santa Rosa	29,547	29,000 — 30,000
Sarasota	76,895	75,000 — 80,000
Seminole	54,947	54,900 — 56,000
Sumter	11,896	11,700 — 12,300
Suwannee	14,961	14,200 — 15,000
Taylor	13,168	13,000 — 14,000
Union	6,043	5,800 — 6,100
Volusia	125,319	112,000 — 170,000
Wakulla	5,257	4,600 — 5,300
Walton	15,576	15,000 — 15,600
Washington	11,249	11,225 — 11,400

NOTICE OF APPEAL FROM FEDERAL COURT.

CIVIL CASE

United States District Court for the Middle District of Florida, Jacksonville Division

ELCEE LUCAS, J. J. LANE, E. O. SIMPSON and E. D. JACKSON,

Plaintiffs,

vs. Civil Action No. 63-51

TOM ADAMS, Secretary of State of the State of Florida, BOB HARRIS, T. K. STOKES, JR., LEM MERRETT, JULIAN WARREN and FLETCHER MORGAN as members of the County Commission, and TOM GREENE, individually,

Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that ELCEE LUCAS, J. J. LANE, E. O. SIMPSON and E. D. JACKSON, the Plaintiffs above named, hereby appeals to the Supreme Court of the United States from the Order granting Motions to Dismiss and for Summary Judgment, and Dismissing Cause With Prejudice, entered in this action on May 22, 1963.

This appeal is taken pursuant to 28 U.S.C. §1253, §2101 (b), and §2281.

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint filed by Plaintiffs on or about March 19, 1963.
2. Ruling of Three Judge Court.
3. Order entered on or about March 23, 1963.
4. Order granting Motions to Dismiss and for Summary Judgment, and Dismissing Cause with Prejudice entered May 22, 1963.

5. All Exhibits filed in evidence by both Plaintiffs and Defendants.

III. The following questions are presented by this appeal:

1. The right to vote and to have ones vote counted in the election of a public officer is abridged unless the vote of one person is given approximately equal weight to that of other citizens in the state in the election of a single public officer voted on by all, or in the election of a number of similar public officers who have equal rank in the same governmental body, but elected from separate groups or constituencies within the state.

2. The Florida Reapportionment act is not free of invidious discrimination by securing to the citizens living in each county, regardless of population, the right to elect at least one representative to the state legislature, but failing to secure to a somewhat similar number of citizens living in the more popular counties the right to also nominate and elect at least one representative to the Florida Legislature.

3. Under the Florida Constitution a representative is required to be a duly qualified elector in the respective counties and district for which he is chosen, and any election pursuant to an apportionment act for such legislators that fail to provide for a division of the county into districts from which each of more than one legislator may be elected not only violates the State Constitution, but also violates the Fourteenth Amendment to the Constitution of the United States.

/s/ Releford McGriff
RELEFORD McGRIFF
411 Broad Street
Jacksonville, Florida

/s/ Ernest D. Jackson, Sr.
ERNEST D. JACKSON, SR.
410 Broad Street, Suite No. 208
Jacksonville 2, Florida
Attorneys for Plaintiffs

PROOF OF SERVICE

I, RELEFORD McGRIFF, Attorney for Elcee Lucas, J. J. Lane, E. O. Simpson and E. D. Jackson, Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the **19th** day of July, 1963, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the several parties thereto, as follows:

1. On Tom Adams, Secretary of State of the State of Florida, by mailing a copy in a duly addressed envelope, with air mail postage prepaid, to the Honorable Richard W. Ervin, Attorney General, State of Florida, Tallahassee, Florida.

2. On Bob Harris, T. K. Stokes, Jr., Lem Merrett, Julian Warren and Fletcher Morgan, by mailing a copy, in a duly addressed envelope, with first class postage prepaid, to J. Henry Blount, Esquire, County Attorney, Duval County, Florida, 1325 Barnett Bank Building, Jacksonville, Florida.

3. On Tom Greene, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to F. Bradley Kennelly, Esquire, 630 Lynch Building, Jacksonville, Florida.

/s/ Releford McGriff

RELEFORD McGRIFF

Attorney for Plaintiffs

411 Broad Street

Jacksonville 2, Florida

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IN THE

Supreme Court of The United States

OCTOBER TERM, 1963

NO. 559

ELCEE LUCAS, J. J. LANE
E. O. SIMPSON and E. D. JACKSON,

Appellants,

-v-

TOM ADAMS, Secretary of State of the State of Florida, BOB HARRIS, T. K. STOKES, JR., LEM MERRETT, JULIAN WARREN and FLETCHER MORGAN as members of the County Commission and TOM GREENE, individually,

Appellees.

On Appeal from the United States District Court
For the Middle District of Florida
Jacksonville Division

MOTION TO AFFIRM IN RESPONSE TO APPELLANT'S JURISDICTIONAL STATEMENT

RICHARD W. ERVIN
Attorney General
The Capitol
Tallahassee, Florida

EDWARD S. JAFFRY
Assistant Attorney General

WILTON R. MILLER
Special Assistant
Attorney General

JOSEPH C. JACOBS
Assistant Attorney General

Counsel for the Appellees

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IN THE

Supreme Court of The United States

OCTOBER TERM, 1963

NO. ———

ELCEE LUCAS, J. J. LANE
E. O. SIMPSON and E. D. JACKSON,

Appellants,

-v-

TOM ADAMS, Secretary of State of the State of Florida, BOB HARRIS, T. K. STOKES, JR., LEM MERRETT, JULIAN WARREN and FLETCHER MORGAN as members of the County Commission and TOM GREENE, individually,

Appellees.

On Appeal from the United States District Court
For the Middle District of Florida
Jacksonville Division

MOTION TO AFFIRM IN RESPONSE TO APPELLANT'S JURISDICTIONAL STATEMENT

Comes now Tom Adams, Secretary of State of the State of Florida, one of the Appellees in the above-styled cause, and moves this Honorable Court to affirm the judgment now sought

to be reviewed for the reason that even a cursory examination of the judgment entered below will reflect that the questions on which the decision of this cause depends are so insubstantial as to need no further argument.

STATEMENT OF FACTS

The facts in the cause are not in dispute. The petitioners are duly qualified electors of the State of Florida residing in the Second Commissioner District of Duval County. The petitioner, E. D. Jackson, was an unsuccessful candidate for one of the seats in the reapportioned Florida House of Representatives. The Florida Legislature pursuant to the order of the Federal Three Judge Court in the case of *Sobel and Swann v. Adams* passed the reapportionment act on February 1, 1963, designated as Senate Bill 10-X and was approved by a Federal Three Judge Court in its order of February 7, 1963.

Pursuant to this reapportionment, the House of Representatives was increased from ninety-five (95) members to one hundred twelve (112) members. Duval County, under the reapportionment, was entitled to seven (7) members of the House of Representatives, where they had previously had three (3). Special elections were held to fill the four vacancies created by reason of the reapportionment. The plaintiff, E. D. Jackson, was, as previously stated, an unsuccessful candidate for one of these vacancies. The reapportionment made no provision for districting within a county and therefore under the election code of Florida, Chapter 101, Florida Statutes, all candidates would run at large from the county. The plaintiffs raised the question of the constitutionality of the reapportionment act by reason of its failure to provide for districting within a county.

"The main contention of the plaintiffs is that the apportionment act designated as Senate Bill 10-X, 1963, failed to divide the larger counties into representative districts based on population, notwithstanding the Apportionment of the House of Representatives under the act was based chiefly upon population number." (Page 6, Appellant's Jurisdictional Statement).

The defendants made a Motion to Dismiss and a Motion for Summary Judgment and on May 22, 1963, the Court granted the defendants' Motion to Dismiss and for Summary Judgment and dismissed the cause with prejudice on the grounds that the complaint failed to state a claim upon which relief could be granted. The plaintiffs filed a Notice of Appeal in this Court on the 19th day of July, 1963.

QUESTION PRESENTED

IN COUNTIES HAVING MORE THAN ONE (1) REPRESENTATIVE IN THE STATE HOUSE OF REPRESENTATIVES, IS FAILURE TO DIVIDE THE COUNTY INTO REPRESNTATIVE DISTRICTS, EACH DISTRICT HAVING ONE (1) REPRESENTATIVE, A VIOLATION OF RIGHTS GUARANTEED UNDER THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION?

ARGUMENT

This case does not involve any question as to the civil liberties of the Negro race. We, therefore, fail to see the significance of the appellant's statement on page 6 of the Jurisdictional Statement as to their race, the number of negroes

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residing in Duval County and their relative voting strength within the county. The significance of the attention the appellants devote to their race is perhaps found in the ultimate purpose of this suit, which we must admit is a unique departure from the usual civil rights case. The appellants are, in essence, requesting that negroes residing in counties having more than one (1) representative in the State House of Representatives be segregated from the other citizens of the county by gerrymandering representative districts within the county in order that they might elect a negro representative. The end result of such a procedure would be the selection of representatives to the State House of Representatives on basis of the race of the constituents in the district rather than on the basis of the candidate's qualifications to serve all of the citizens of the county.

In the language of the Court below:

> "The plaintiffs here seek to recover on a theory under the United States Constitution that is novel and has never heretofore been found to afford the relief they seek . . ."

At large elections have been uniformly upheld as complying with requirements of both due process and equal protection. In the case of *Morris v. Wrighton*, 28 *Atlantic* 56, the Supreme Court of the State of New Jersey in an 1893 decision held that a constitutional requirement that members of the Legislature be elected by the legal voters of the county, was violated where districting within a county was by statute required. The effect of that decision was to state that anything other than at large elections was unconstitutional.

In the case of *State ex rel Davis v. Ramacciotti*, 193 S.W. 2d 617, the Supreme Court of Missouri held that the districting

of seven (7) Senatorial districts of the City of St. Louis did not constitute a racial discrimination depriving negro voters of their opportunity to exercise their group influences by splitting up the Negro vote among the district. In that case, it was alleged that the districting was in such a manner as to divide the negro vote in various districts so as to weaken the impact of their vote. It appears that the plaintiffs herein are seeking the converse to that alleged in the Davis case, and which would, in our judgment, be equally unpalatable constitutionally. The plaintiffs appear to desire districting which would be on the basis of race, which of course could not be sustained. In the language of the Court, quoting from page 619:

> "... Relator might contend with even more force that his race has been discriminated against if the heavy negro majority in the five contiguous wards mentioned had been confined in one new senatorial district. Then he probably would be maintaining that if that race vote influence had been distributed in senatorial districts which were close as between the two dominant political parties, it could have been exercised so as to control the nomination and election of senators in several districts instead of one. What the Negro has been objecting to is discrimination against his race whereby he is denied the same political and other privileges that are enjoyed by others. But here the color factor was disregarded and he was treated the same as any other voter."

How could the Negro voter be more clearly and more definitely and unequivocably treated the same as any other voter than in elections at large throughout the county, where his vote is neither confined into a district nor spread among

districts, either of which act might be used by the unscrupulous as an effort to weaken the influence of his ballot. In the case of *Alsup v. Mayhall, 208 Fed. Supp. 713*, it was held that in Alabama the act providing for the election of Congressional representatives at large did not violate the rights of a citizen of the State of Alabama as guaranteed by the Fifth and Fifteenth Amendments to the Federal Constitution. In the language of the Court at page 716:

> ". . . it is very readily seen that petitioner Alsup shows no discrimination, no unequal treatment and no arbitrariness in the State's action. If Alsup is (or was) entitled to vote in the primary, then he has an equal voice with the other electors in the district. If he is (or was) entitled to vote in the runoff primary, then he has an equal vote with other electors in the State. In the election to be held in this State in November, 1962, Alsup has a right to vote on the same basis as other electors in the State. The provision that every elector who votes in such election must vote for eight and only eight candidates for representatives in Congress binds every elector in the State.
>
> "Not only does Alsup fail to show arbitrariness on the part of the Alabama Legislature in enacting 'Act 154' (Senate Bill 224), but such a system as the Legislature for the State of Alabama is following in this instance has been stated to be the manner in which elections are to be held when there has been a reduction in the number of congressional seats within a state. *Smiley v. Holm*, 285 *U.S.* 355, 52 *S.Ct.* 397, 76 *L. Ed.* 795. That court, in holding the act of the Minnesota Legislature to be void, stated as follows:
>
> > '[I]n such a case [decrease in number of representatives], unless and until new districts

> are created, all representatives allotted to the State must be elected by the State at large. That would be required, in the absence of a redistricting act, in order to afford the representation to which the State is constitutionally entitled . . ."

"Accord, *Carroll v. Becker*, 285 *U.S.* 380, 52 *S. Ct.* 402, *76 L.Ed. 807 (1932); Koenig v. Flynn*, 285 *U.S.* 375, *52 S.Ct. 403, 76 L.Ed. 805 (1932).*"

The appellants admit that this Court has not ruled squarely on the alleged facts in this case. It is, however, their contention that this Court decided the issue which they raise in *Gray v. Sanders*, 83 *S.Ct. 801*, and that the opinion in Gray v. Sanders, supra, is the law which should govern the issues in this case. (See page 8, Appellant's Jurisdictional Statement). We cannot find in Gray v. Sanders any legal theory or language which would support the plaintiffs' contention that the opinion supports the plaintiffs' position. On the contrary the language of the opinion would appear to be more favorable to the defendant's position. Mr. Justice Douglas, speaking for the majority in that decision stated as follows:

> "Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income and wherever their home may be in that geographical unit. This is required by the equal protection clause of the 14th Amendment. The conception 'we the people', under the constitution visualizes no preferred class of voters but equally among those who meet the basic qualifications. The idea that every voter is equal to every

> other voter in the state when he casts his ballot in favor of one or several competing candidates underlies many of our decisions."

Mr. Justice Stewart, in a concurring opinion stated as follows:

> "Within a given constituency, there can be room for but a single constitutional rule—one voter, one vote."

The geographical unit for which the representatives of the people are chosen in the State of Florida is the county. All qualified electors within the county—"whatever their race, whatever their sex, whatever their occupation, whatever their income and wherever their home may be in that geographical unit"—each has one vote, each voter is equal to every other voter within the county whenever he casts his ballot in favor of one or several competing candidates and, as requested by the plaintiffs, the home site of the voter within the county is not used as a basis for distinguishing between the qualified voters residing within the county. We believe that at large elections within a county are completely in accord with the requirements of the Fourteenth Amendment to the Federal Constitution and that, as a matter of democratic process, at large elections are more in keeping with the spirit of the Fourteenth Amendment than would be gerrymandered districting within the county.

CONCLUSION

We respectfully submit that in view of the matters submitted herein the order of the Lower Court sought to be reviewed is proper in all respects and the appellants present no question of substantial nature upon which the decision of of this Court would depend.

Respectfully submitted

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PROOF OF SERVICE

I, Joseph C. Jacobs, counsel for the Appellees herein, the Honorable Tom Adams, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of _____, 1963, I served copies of the foregoing Motion to Affirm Response to Appellant's Jurisdictional Statement on the parties herein named, by mailing copies in a duly addressed envelope, with postage prepaid, to: Honorable Releford McGriff, 411 Broad Street, Jacksonville 2, Flor-

ida, and Honorable Ernest D. Jackson, Sr., 410 Broad Street, Suite 208, Jacksonville, Florida, Attorneys for Appellants.

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Assistant Attorney General

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